

1 COMP

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15 CASE NO: A-22-854858-C

16 Department 32

17 DISTRICT COURT

18 CLARK COUNTY, NEVADA

19 FABIOLA FRAGOSO, individually;

20 CASE NO.:
DEPT. NO.:

21 Plaintiff,

22 vs.

23 WAL-MART, INC., a foreign corporation;
DOE EMPLOYEES; DOE MANAGERS;
DOES I – XX, inclusive; and ROE
CORPORATIONS I – XX, inclusive,24 COMPLAINT
AND DEMAND FOR JURY TRIAL

25 Defendants.

26 Plaintiff, FABIOLA FRAGOSO, by and through her counsel of record, BRADLEY S.
27 MAINOR, ESQ., JOSEPH J. WIRTH, ESQ., and ASH MARIE BLACKBURN, ESQ. of the law
28 firm MAINOR WIRTH, LLP, and for her claims for relief against Defendants, and each of them,
alleges as follows:

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I.

PARTIES AND JURISDICTION

1. At all times relevant herein, Plaintiff FABIOLA FRAGOSO is, and was, a resident of the County of Clark, State of Nevada;

2. Plaintiff is informed and believes, and thereupon alleges, that Defendant, WAL-MART, INC., is, and at all relevant times herein was, a foreign corporation duly licensed and doing business in Clark County, State of Nevada.

3. That the true names and capacities, whether individual, corporate, associates, co-partnership, or otherwise of Defendants, DOE EMPLOYEES, DOE MANAGERS, DOES I through XX, and ROE CORPORATIONS I through XX, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated as DOE EMPLOYEES, DOE MANAGERS, DOES I through XX and ROE CORPORATIONS I through XX are responsible in some manner for the events and happenings referred to in this action and proximately caused damages to the Plaintiff as alleged herein. The legal responsibility of said Defendants DOE EMPLOYEES, DOE MANAGERS, DOES I through XX and ROE CORPORATIONS I through XX arises out of, but is not limited to, their status as owners and/or employees, and/or their maintenance, entrustment, construction, manufacture, sale, and/or service of the premises and/or any fixtures within the premises, which Defendants, and each of them, were operating and/or controlling at the time of the subject injury, and/or their agency, master/servant or joint venture relationship with said Defendants. This includes Defendants who caused a hazard to be on the floor of the premises, who failed to reasonably inspect the premises as part of their job duties, who failed to reasonably maintain the premises as part of their job duties, who failed to reasonably train, monitor and manage those responsible for inspecting and maintain the premise. The breach of

such duties caused injury to Plaintiff as described herein. Plaintiff will ask leave of this Honorable Court to amend this Complaint to insert the true names and capacities of said Defendants, and when the same have been ascertained, to join such Defendants in this action together with the proper charging allegations.

4. That the facts and circumstances giving rise to the subject lawsuit occurred at Wal-Mart, store no. 2884, located at 8060 W. Tropical Pkwy, Las Vegas, Nevada, 89149.

II.

STATEMENT OF FACTS

5. On or about July 5, 2020, DEFENDANTS, and each of them, owned and/or controlled the premises commonly known as Wal-Mart, store no. 2884, located at 8060 W. Tropical Pkwy, Las Vegas, Nevada, 89149 (hereinafter “the subject premises”).

6. That on or about July 5, 2020, Plaintiff FABIOLA FRAGOSO (hereinafter “Plaintiff FRAGOSO”) was a business invitee and/or guest of DEFENDANTS and was legally upon the subject premises at the time of the subject incident complained of herein.

7. That on or about July 5, 2020, Plaintiff FABIOLA FRAGOSO was blind.

8. That on or about July 5, 2020, Plaintiff FRAGOSO was shopping for potting soil in the outdoor garden section at the subject premises. As Plaintiff FRAGOSO was walking through the garden section, water covered the ground. As a result of the wet floor, Plaintiff slipped and fell, landing on the concrete. Plaintiff’s clothes became wet from water on the ground.

9. This incident, hereinafter referred to as “Subject Incident”, caused significant and permanent injuries to Plaintiff FRAGOSO.

III.

FIRST CAUSE OF ACTION

(Negligence, Including Vicarious Liability – All Defendants)

10. Plaintiff hereby repeats, realleges and incorporates by reference, each and every allegation set forth above as if fully set forth herein.

1 11. Defendants WAL-MART, DOE EMPLOYEES, DOE MANAGERS, DOES I – XX,
2 and ROE CORPORATIONS I – XX owed duties of care to Plaintiff FRAGOSO and WAL-
3 MART customers to provide a safe environment and premises, and to take reasonable safety
4 measures in the cleaning, inspection, maintenance, and overall conditions of the floor,
5 equipment, displays, products, and general area in and around WAL-MART's garden department.
6 In complete disregard of their duty, Defendants, and each of them, allowed for a dangerous hazard
7 to exist and cause serious injury to Plaintiff.

9 12. Defendants WAL-MART, DOE EMPLOYEES, DOE MANAGERS, DOES I – XX,
10 and ROE CORPORATIONS I – XX breached their duties of care, including but not limited to the
11 following manners of breach:

- 12 a. Negligently inspecting, maintaining, cleaning and/or drying the floors,
13 premises, and overall area in and around the garden department and location of
14 the Subject Incident, and/or negligently causing water to be on the ground
15 without adequate procedures, precautions, and/or warnings, so as to create a
16 hazardous condition(s) in and around the area of the Subject Incident;
- 17 b. Negligently overseeing and supervising employees responsible for and/or
18 involved in the duties of cleaning and maintaining the floors and overall garden
19 department, and/or failing to assign a reasonable and sufficient number of
20 employees to perform these duties to ensure that Defendants' premises is
21 reasonably safe and that there are no hazardous conditions on or around the floor;
- 22 c. Failing to stay reasonably and adequately informed and updated about
23 WAL-MART's safety measures and precautions to prevent, clean, and remedy
24 hazards on the floor;

- 1 d. Failing to stay reasonably informed and updated about the conditions and needs of
2 the garden department and surrounding area;
3 e. Failing to warn Plaintiff of the presence of said hazardous condition(s).

4 13. Defendants' breaches of their duties created an unreasonably hazardous condition(s) and
5 risk of harm on the premises and in the area where Plaintiff FRAGOSO slipped and fell, over
6 which Plaintiff had no control.

7 14. As a direct and proximate cause of the aforesaid actions, breach, and negligence of
8 Defendants, and each of them, Defendants WAL-MART, DOE EMPLOYEES, DOE
9 MANAGERS, DOES I – XX, and ROE CORPORATIONS I – XX directly or indirectly caused
10 an excessive amount of water to be on the floor of WAL-MART's premises, creating a
11 hazardous condition. Plaintiff unknowingly and inadvertently stepped in this excessive amount
12 of water, causing her to slip, fall and sustain significant and permanent injuries, resulting in the
13 damages set forth herein.

14 15. As a direct and proximate result of the negligence of DEFENDANTS, Plaintiff
15 FRAGOSO was seriously injured and caused to suffer great pain of body and mind, all or some of
16 which may be permanent and disabling in nature, aggravating to her general and compensatory
17 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

18 16. As a further and direct and proximate result of the negligence of Defendant, Plaintiff
19 FRAGOSO incurred expenses for medical care, treatment and expenses incidental thereto, and
20 Plaintiff may be required in the future to incur expenses for medical care and treatment.

21 17. Plaintiff has been required to retain the services of MAINOR WIRTH to prosecute this
22 action and is entitled to reasonable attorneys' fees and costs incurred herein.

23 **IV.**

24 **SECOND CAUSE OF ACTION**
25 **(Premises Liability)**

26 18. Plaintiff hereby repeats, realleges and incorporates by reference, each and every allegation

1 set forth above as if fully set forth herein.

2 19. That on or about July 5, 2020, it was the duty of DEFENDANTS, and each of them, to
3 use reasonable care and diligence to keep and maintain the floors of the subject premises in a
4 condition reasonably safe for its intended uses and free from all conditions which would render
5 them dangerous and unsafe for Plaintiff FRAGOSO or present an unreasonable risk of harm to
6 her during her lawful use of the subject premises.
7

8 20. That it was the duty of DEFENDANTS to exercise reasonable care to protect Plaintiff
9 FRAGOSO by inspection, maintenance, and other affirmative acts from the danger of reasonably
10 foreseeable injury occurring from her lawful use of the subject premises.
11

12 21. That it was the duty of DEFENDANTS to have available sufficient personnel and
13 equipment to properly inspect, maintain and/or warn of a hazard on the subject premises so as to
14 keep it in a condition reasonably safe for Plaintiff FRAGOSO and free from conditions rendering
15 it unsafe.
16

17 22. That it was the duty of DEFENDANTS to warn Plaintiff FRAGOSO of the dangerous
18 and unsafe condition then existing upon the subject premises.
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20 23. DEFENDANTS breached their duty by negligently failing to control, supervise, repair,
21 clean, and maintain the subject premises and further failing to warn Plaintiff FRAGOSO of
22 hazard which resulted in her injury.
23

24 24. DEFENDANTS breached their duty to maintain the premises in a safe condition and
25 manner, rendering the premises to be a hazard and dangerous for usage by persons lawfully on
26 the subject premises.
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28 25. That the resulting injuries to Plaintiff FRAGOSO were caused by the negligence and
carelessness of DEFENDANTS, who failed to utilize reasonable care in the inspection and/or
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1 maintenance of the subject premises, and the aforesaid acts of negligence were the proximate
2 cause of the injuries sustained by Plaintiff FRAGOSO.

3 26. As a direct and proximate result, Plaintiff FRAGOSO was seriously injured and caused to
4 suffer great pain of body and mind, all or some of which may be permanent and disabling in
5 nature, aggravating to her general and compensatory damages in an amount in excess of Fifteen
6 Thousand Dollars (\$15,000.00).

7 27. As a further and direct and proximate result of the subject incident, Plaintiff FRAGOSO
8 incurred expenses for medical care, treatment and expenses incidental thereto, and Plaintiff may
9 be required in the future to incur expenses for medical care and treatment.

10 28. Plaintiff has been required to retain the services of MAINOR WIRTH to prosecute this
11 action and is entitled to reasonable attorneys' fees and costs incurred herein.

12 IV.

13 **THIRD CAUSE OF ACTION**
14 **(Negligent Hiring, Training and Supervision – All Defendants)**

15 29. Plaintiff hereby repeats, re-alleges and incorporates by reference Paragraphs 1 through 28
16 above as if fully set forth herein.

17 30. Defendants owed Plaintiff a duty to utilize reasonable application, screening, and hiring
18 processes for all its employees, agents, servants, partners, associates, and/or associations to
19 perform the necessary job functions and ensure that safety measures were in place to safely and
20 properly prevent, inspect, maintain and/or warn of any hazardous conditions on the subject
21 premises.

22 31. Defendant breached its duty by failing to utilize reasonable application, screening, and
23 hiring processes for its employees, agents, servants, partners, associates, and/or associations and
24 such breach resulted in Defendant employing individuals without the necessary ability,
25 knowledge, or skill to safely and properly prevent, inspect, maintain and/or warn of any

1 hazardous conditions on the subject premises.

2 32. Defendant owed Plaintiff a duty to reasonably train its employees, agents, servants,
3 partners, associates, and/or associations to perform the necessary job functions and ensure that
4 safety measures were in place to safely and properly prevent, inspect, maintain and/or warn of any
5 hazardous conditions on the subject premises.

6 33. Defendant breached its duty to reasonably train its employees, agents, servants, partners,
7 associates, and/or associations to perform the necessary job functions and ensure that safety
8 measures were in place to safely and properly prevent, inspect, maintain and/or warn of any
9 hazardous conditions on the subject premises.

10 34. Defendant owed Plaintiff a duty to reasonably supervise its employees, agents, servants,
11 partners, associates, and/or associations to perform the necessary job functions and ensure that
12 safety measures were in place to safely and properly prevent, inspect, maintain and/or warn of any
13 hazardous conditions on the subject premises.

14 35. Defendant breached its duty to reasonably supervise its employees, agents, servants,
15 partners, associates, and/or associations to perform the necessary job functions and ensure that
16 safety measures were in place to safely and properly prevent, inspect, maintain and/or warn of any
17 hazardous conditions on the subject premises.

18 36. Defendant owed Plaintiff a duty to discharge or terminate its employees, agents, servants,
19 partners, associates, and/or associations, who Defendant knew or reasonably should have known,
20 was/were unfit to perform the necessary job functions, including but not limited to, the
21 prevention, inspection, maintenance and/or warning of any hazardous conditions on the subject
22 premises.

23 37. Defendant breached its duty to discharge or terminate its employees, agents, servants,
24 partners, associates, and/or associations, who Defendant knew or reasonably should have known,
25 was/were unfit to perform the necessary job functions, including but not limited to, the
26 prevention, inspection, maintenance and/or warning of any hazardous conditions on the subject
27

premises.

38. As a direct and proximate cause of said Defendants negligent hiring, training, retention and supervision, Plaintiff was seriously injured and caused to suffer great pain of body and mind, all or some of which may be permanent and disabling in nature, aggravating to her general and compensatory damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

39. As a further direct and proximate result of said Defendants negligent hiring, training, retention and supervision, Plaintiff incurred expense for medical care, treatment and expenses incidental thereto, and Plaintiff may be required in the future to incur medical expenses for medical care and treatment.

40. Plaintiff has been required to retain the services of MAINOR WIRTH, LLP to prosecute this action and is entitled to reasonable attorney's fees and costs incurred therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. General and compensatory damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00);
 2. Special damages in excess of Fifteen Thousand Dollars (\$15,000.00);
 3. Damages for cost of medical care and treatment and costs incidental thereto;
 4. Damages for future costs of medical care and treatment and costs incidental thereto;
 5. Lost wages and loss of earning capacity;
 6. For reasonable attorney fees, costs of suit and interest incurred herein; and
 7. For such other and relief as the Court deems just and proper.

DATED this 30th day of June, 2022.

MAINOR WIRTH, LLP

/s/ Ash Marie Blackburn

ASH MARIE BLACKBURN, ESQ.
Nevada Bar No. 14714
Counsel for Plaintiff